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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1950.

**No. 461**

Office-Supreme Court, U. S.  
**FILED**

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IN THE MATTER OF  
**FEDERAL FACILITIES REALTY TRUST, A COMMON  
LAW TRUST, AND NATIONAL REALTY TRUST, A  
COMMON LAW TRUST,**

**Debtors.**

**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL  
REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,  
AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**

*Petitioners,*

*vs.*

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY  
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

*Respondent.*

**MOTION TO SUBSTITUTE PRESENT TRUSTEES FOR  
PREDECESSOR TRUSTEES AS PETITIONERS  
AND  
REPLY BRIEF OF PETITIONERS.**

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REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,  
AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**

*Petitioners,*

**vs.**

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY  
TRUST AND FEDERAL FACILITIES REALTY TRUST,**

*Respondent.*

---

**MOTION TO SUBSTITUTE PRESENT TRUSTEES FOR  
PREDECESSOR TRUSTEES.**

---

*To the Honorable Justices of the Supreme Court of the  
United States:*

Now come Frank M. Whiston, successor trustee of Na-  
tional Realty Trust, and Joseph Schwartz, successor trustee  
of Federal Facilities Realty Trust, and move that they be

substituted in this cause for Stacy C. Mosser, as trustee of said trusts, for the following reasons:

1. On October 17, 1950, an order was entered in the District Court for the Northern District of Illinois, Eastern Division, in the proceedings there pending for the reorganization of National Realty Trust accepting the resignation of Stacy C. Mosser as successor trustee of said trust and appointing Frank M. Whiston as successor trustee of National Realty Trust, and the said Frank M. Whiston is now the duly qualified and acting trustee of National Realty Trust.\*

2. On November 29, 1950, an order was entered in the District Court for the Northern District of Illinois, Eastern Division, in the proceedings there pending for the reorganization of Federal Facilities Realty Trust accepting the resignation of Stacy C. Mosser as successor trustee of said trust, effective December 1, 1950, and appointing Joseph Schwartz as successor trustee of Federal Facilities Realty Trust, and said Joseph Schwartz is now the duly qualified and acting trustee of Federal Facilities Realty Trust.\*

3. Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz, successor trustee of Federal Facilities Realty Trust, desire and hereby elect to adopt, carry on and continue the proceedings heretofore brought by Stacy C. Mosser as trustee of National Realty Trust and as trustee of Federal Facilities Realty Trust in this cause, for the purpose of preserving the estates of said trusts and recovering assets to which said trusts are entitled.

WHEREFORE, Frank M. Whiston, as trustee of National Realty Trust, prays that he may be substituted for Stacy C. Mosser, trustee of National Realty Trust, as peti-

\* Certified copies of these and the other pertinent orders have been filed with the clerk in these proceedings and are set forth in Appendix to Petitioners' Reply Brief.

tioner in this cause, and Joseph Schwartz, as trustee of Federal Facilities Realty Trust, prays that he may be substituted for Stacy C. Mosser, trustee of Federal Facilities Realty Trust, as petitioner in this cause.

Respectfully submitted,

CARL W. MOLFINGER and  
J. EDGAR KELLY,

*Counsel for Frank M. Whiston,  
Petitioner.*

CARL W. MOLFINGER,  
J. EDGAR KELLY and  
STANLEY A. KAPLAN,

*Counsel for Joseph Schwartz,  
Petitioner.*

### **CONSENT TO SUBSTITUTION BY PREDECESSOR TRUSTEE.**

The undersigned hereby consents to the substitution of Frank M. Whiston, trustee of National Realty Trust, and Joseph Schwartz, trustee of Federal Facilities Realty Trust, in his stead as petitioners in this cause.

STACY C. MOSSER.



4

AFFIDAVIT.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

J. EDGAR KELLY, being first duly sworn, on oath deposes and says that:

1. He is a member of the bar of the highest court of the State of Illinois and of the Supreme Court of the United States.

2. He is a member of the law firm of Deming, Jarrett & Mulfinger, and together with Carl W. Mulfinger of said firm has been acting as counsel for the trustees of National Realty Trust and Federal Facilities Realty Trust since November 17, 1943.

3. Stacy C. Mosser was appointed as successor trustee of National Realty Trust and Federal Facilities Realty Trust on August 13, 1943, and the cause below from which petition for certiorari has been taken was instituted in the Circuit Court of Appeals on appeal taken by Darrow on the 12th day of April, 1949, while Stacy C. Mosser was sole trustee of both trusts.

4. On the 7th day of November, 1949, Frank M. Whiston was appointed co-trustee with Stacy C. Mosser of National Realty Trust and on the 17th day of October, 1950, Stacy C. Mosser resigned as co-trustee of National Realty Trust, leaving Frank M. Whiston as sole trustee.

5. On the 7th day of November, 1949, Joseph Schwartz was appointed co-trustee with Stacy C. Mosser of Federal Facilities Realty Trust and on the 1st day of December, 1950, Stacy C. Mosser's resignation as co-trustee of Federal Facilities Realty Trust became effective, leaving Joseph Schwartz as sole trustee.

6. The cause in the court below proceeded to conclusion in the name of Stacy C. Mosser as trustee of National

Realty Trust and Federal Facilities Realty Trust, and John W. Guild, successor indenture trustee, appellees.

7. On September 29, 1950 the Court of Appeals for the Seventh Circuit issued its mandate in this cause and on October 26, 1950 Frank M. Whiston, as successor trustee of National Realty Trust and Stacy C. Mosser and Joseph Schwartz as successor trustees of Federal Facilities Realty Trust procured the authority of the District Court to seek certiorari from the decision of the Court of Appeals.

8. On October 31, 1950 Stacy C. Mosser, as trustee of the two trusts, and the only trustee of record in the Court of Appeals, filed with the clerk of that court a designation of record, thereby initiating these proceedings for the issuance of a writ of certiorari. Pursuant to that designation of record the clerk of the Court of Appeals prepared and certified the record on November 8, 1950. On November 27, 1950 the record was forwarded to the clerk of this court and received by him prior to December 1, 1950, the date on which Mosser's resignation as trustee of Federal Facilities Realty Trust became effective.

9. Stacy C. Mosser being the only trustee named as a party petitioner in the record filed in this court, the petition for certiorari was prepared and filed in his name with his knowledge and consent and with the knowledge, consent and participation of Messrs. Schwartz and Whiston, with the expectation and intention of filing supplemental pleadings in the Supreme Court of the United States substituting the names of the successor trustees, Frank M. Whiston and Joseph Schwartz, as petitioners therein.

10. Affiant further states that Stacy C. Mosser has not been discharged as trustee in either of these trusts to date, his accounts are pending approval and his bonds have not been cancelled.

11. - This affidavit is made by the undersigned, as counsel above mentioned, in support of the motion to substitute

in this cause the names of Frank M. Whiston as trustee of National Realty Trust and Joseph Schwartz as trustee of Federal Facilities Realty Trust for the name of Stacy C. Mosser as trustee of said trusts.

J. EDGAR KELLY.

Subscribed and sworn to before me this 22nd day of January, A. D. 1951. /

EVA RAUSCHENBERGER,  
*Notary Public.*

IN THE  
**Supreme Court of the United States**

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No. 461.

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IN THE MATTER OF  
**FEDERAL FACILITIES REALTY TRUST, A COMMON  
 LAW TRUST, AND NATIONAL REALTY TRUST, A  
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**Debtors.**

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**STACY C. MOSSER, SUCCESSOR TRUSTEE OF NATIONAL  
 REALTY TRUST AND FEDERAL FACILITIES REALTY TRUST,  
 AND JOHN W. GUILD, INDENTURE TRUSTEE, ETC.**

*Petitioners.*

vs.

**PAUL E. DARROW, FORMER TRUSTEE OF NATIONAL REALTY  
 TRUST AND FEDERAL FACILITIES REALTY TRUST,**

*Respondent.*

---

**BRIEF IN SUPPORT OF MOTION FOR SUBSTITU-  
 TION OF PRESENT TRUSTEES FOR FORMER  
 TRUSTEES IN THIS CAUSE AND IN REPLY TO  
 BRIEF OF RESPONDENT DARROW.**

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**Argument in Support of Motion to Substitute Present Trus-  
 tees for Former Trustees and Reply to Point I of Re-  
 spondent Darrow's Brief.**

I.

The cause in the court below was a consolidated case  
 entitled "Stacy C. Mosser, Successor Trustee of National  
 Realty Trust and Federal Facilities Realty Trust, and John



W. Guild, Indenture Trustee *vs.* Paul E. Darrow, Former Trustee of National Realty Trust and Federal Facilities Realty Trust". The case concluded under said title in the Court of Appeals for the Seventh Circuit when that court issued its mandate on September 29, 1950, while Stacy C. Mosser was trustee of both trusts. The facts on which the motion for the substitution of the names of the present trustees for their predecessor is based are set forth in the motion for substitution and in the affidavit in support thereof. The chronological statement of the pertinent facts set forth in the affidavit filed in support of the motion to substitute trustees (which in the interest of brevity is not repeated here) discloses that Mosser initiated this petition for certiorari when he was the only trustee who had been a party below and that the record had been certified to this court and the petition was in the process of preparation when he resigned as trustee of these trusts. It should be noted, moreover, that Mosser has not yet been discharged as trustee of said trust nor his bonds cancelled. His successors in office filed the petition in his name with the expectation and intention of filing supplemental pleadings to correct the record in this Court.

In fact, purpose, and effect, this petition for certiorari actually and in legal import is the petition of Federal Facilities Realty Trust and of National Realty Trust, and of their respective trustees. A proper motion requesting substitution is now being made, with due dispatch and within six months from the date of Mosser's resignation as trustee of the respective trusts.

The right of the present trustees of these trusts to carry on this litigation is specifically set forth in the following provision of the Bankruptcy Act, United States Code, Title 11, Chap. 5, Sec. 74, which provides:

*"Death or Removal of Receivers or Trustees. The death or removal of a receiver or trustee shall not*

abate any suit or proceedings which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint receiver or joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint receiver or joint trustee alone or by such successor."

This provision of the Bankruptcy Act makes it clear that the action does not abate. The successor trustees are now asking to be substituted as petitioners in this Court in order to give effect to their substantive right under the Bankruptcy Act by making such substitution in the only forum available to them for that purpose, the mandate of the Court of Appeals having issued prior to the resignation of the predecessor trustee.

Respondent Darrow in his brief asserts that the petition for certiorari in the name of the former trustee is improper and that the court is without jurisdiction. The cases cited by the respondent at page 9 of his brief all deal with appeals by persons who were not parties to the record below and who sought unsuccessfully to petition for certiorari. None of the cases so cited by the respondent are at all applicable to the instant situation.

The appointment of Messrs. Whiston and Schwartz as successor trustees to Mosser as trustee of National Realty Trust and Federal Facilities Realty Trust effects a transfer of title to assets of heir trusts, consisting of various property rights, including the pending cause of action. The situation is therefore analogous to a transfer of a cause of action *pendente lite* or an assignment of a contractual right. In such cases it was formerly held at common law that such litigation must necessarily be continued by the transferee in the name of the transferor and it still remains permissible practice. At most, the change of parties plaintiff in an action theretofore maintained in the name of the transferor rather than the transferee can

be readily rectified by substituting the transferee. See *Bragg v. Gerstel*, 148 F. (2) 757, 758, CCA 5th (1945); *Fox v. McGrath*, 152 F. (2d) 616, 618 C. A. 2d (1945); *Commercial Credit Co. v. County of Northumberland*, 23 F. Supp. 747 D.<sup>3</sup> C. M. D. Pa. (1938); *Bowers v. American Surety Co.*, 30 F. (2) 244 C. C. A. 2d (1929); *Sumpter Lumber Co. v. Sound Timber Co.*, 257 Fed. 408 C. C. A. 9th (1919); *F. A. Mfg. Co., Inc. v. Hayden & Clemens, Inc.*, 273 Fed. 374 C. C. A. 1st (1921); 1 American Jurisprudence 49; Cyclopedia of Federal Procedure, 2d Ed., Vol. 6, p. 117.

A closely similar situation was involved in the case of *Adams v. Johnson*, 107 U. S. 251 (1883). Adams was appointed as receiver in place of Bowden, the original receiver and the original plaintiff. The appeal to the Supreme Court was taken in the name of Bowden. Adams moved in the Supreme Court to be substituted as plaintiff and appellant in place of Bowden, without prejudice to the proceedings theretofore had. Appellees moved to dismiss the appeal on the ground that no appeal was ever lawfully taken. The motion to dismiss was denied and the motion of Adams to be substituted was granted. The principle of the *Adams* case is applicable to this cause. The formal substitution of parties by changes in name can do no injury to the respondent in this case.

Another analogous case authorizing substitution of parties plaintiff in this Court is *Gates v. Goodloe*, 101 U. S. 612 (1880). Similarly, in the case of *Myers v. Canton National Bank, Canton, Illinois*, 109 F. (2) 31 (1940), a motion to dismiss by appellee was made in the Circuit Court of Appeals on the ground that the original pleadings in that court named the predecessor receiver who had been replaced by the present receiver. The appellee contended that the receiver was an indispensable party, and that since the receiver sued was the predecessor and not the present re-

ceiver the proceedings were fatally defective. The court stated that the new receiver could be substituted as a party.

In the present litigation, the real parties in interest are the trust estates which are being administered by the Federal Court. The estates themselves are, in reality, before this court, and the filing of the petition in the name of the predecessor trustee is a technicality of form which should not stand in the way of rendering substantive justice.

Furthermore, this substitution of present trustees for Mosser is permissible under the rules and procedures of this court, which are flexible enough to permit this correction in the name of the parties petitioners. Rule 19 (4) of the Revised Rules of the Supreme Court of the United States provides that where a public officer by or against whom a suit is brought dies or ceases to hold office while the suit is pending in a federal court, either of the first instance or appellate, a successor in office may be substituted on proper showing made within six months after the date of the death or separation from office.

Frank M. Whiston and Joseph Schwartz were appointed trustees pursuant to Chapter X of the Bankruptcy Act by the United States District Court authorized by Congress to make the appointment (11 U. S. C. A., Sec. 556). As such, they are not only officers of the District Court, but are public officers. By sections 186 and 187 of the Bankruptcy Act, (11 U. S. C. A., Secs. 586 and 587) the Chapter X trustee is vested with the same title, rights, duties, and powers as the bankruptcy trustee appointed under section 44 of the act (11 U. S. C. A., Sec. 72). Section 44 is part of Chapter V of the Bankruptcy Act which is entitled "Officers, Their Duties and Compensation", and Section 33 of said chapter creates the "offices of referee and trustee" (11 U. S. C. A., Sec. 61). Section 50 of the Bankruptcy Act (11 U. S. C. A., Sec. 78), requires that a trustee shall "qualify by furnishing a bond to the United States".



It has been held that a bankruptcy trustee is an "officer" of the United States court which appoints him. *Vass v. Conron Bros. Co.*, 59 F. (2d) 969; C. C. A. 2, (1932). See also *In re Morris White Holding Company*, 52 F. (2d) 499, 501, S. D. N. Y. (1931). This court has stated in the case of *Callaghan v. Reconstruction Finance Corporation*, 297 U. S. 464, 468 (1935), that trustees in bankruptcy are "public officers". The Court of Appeals for the Third Circuit in the case of *In re Prindible*, 115 F. (2d) 21 (1940), stated that trustees in bankruptcy, as well as referees are "public officers".

A receiver of a national bank appointed by the Controller of the Currency has been held to be an officer of the United States in numerous cases. See *Pufahl v. Est. of Parks*, 299 U. S. 217, 225 (1936); *U. S. v. Weitzel*, 246 U. S. 533, 541. The powers, duties, obligations, and responsibilities of a trustee appointed under Chapter X are broader and more extensive than the powers of a receiver of a national bank or a trustee in straight bankruptcy, and such a trustee under Chapter X is *a fortiori* a public officer and an officer of the United States.

Therefore, Frank M. Whiston and Joseph Schwartz, as trustees of these trusts are public officers entitled within the meaning of Rule 19 (4) to move their substitution as petitioners in this cause within six months from the dates of the resignations of their predecessor in office. The continuance of this cause of action by them is necessary and proper in order to protect and preserve their trust and in order to recover assets to which such estates are properly entitled. No new cause of action is being asserted nor are these petitioners seeking to change the liability sought to be enforced against the respondent Darrow.

The statement of the court in the case of *Fleming v.*

*Goodwin*, C. C. A. 8, 1948, 165 F. (2d) 334, at 338, cert. denied 334 U. S. 828, is pertinent in the instant situation. That case involved the right to substitute as party plaintiff a successor price administrator for his predecessor in office under Rule 25 (d) of the Rules of Civil Procedure which is analogous to Rule 19 (4) of this court. The Circuit Court of Appeals, in granting the right to substitute, stated:

"The action was, however, in substance and reality, at all times a controversy between the government and the appellees. The only purpose of substitution in such a case was to keep the records straight so that the judgment finally entered would unquestionably bind the right parties. Such a substitution we think amounts to not more than the formal amendment to the title of the action to conform it to the truth."

Similarly, in *United States v. Koike*, 164 F. (2d) 155, 157, C. C. A. 9th, (1947), the court indicated that a substitution of the United States for the price administrator was not really a matter of a new party because previous holders of the office were no more than nominal plaintiffs and the United States was the real petitioner. The court stated:

"\* \* \* It is within the scope of this power to permit the substitution of a party for whose benefit an action was brought in place of the nominal plaintiff. This has been done both where the nominal plaintiff was found to lack authority to sue and where the statute of limitations would have barred the commencement of a new action by a real plaintiff. *McDonald v. Nebraska*, 8 Cir. 101 F. 171. *A fortiori* it may be done here, where the nominal plaintiff originally had authority to sue, but was later deprived of it."

Likewise, in *Porter v. Maule*, 160 Fed. (2d) 1 C. C. A. 5, (1947), defendants moved to dismiss Porter's appeal because at the time the notice of appeal was given in the name of Bowles (his predecessor in office) Porter not Bowles was the administrator and since Porter had not

given notice of appeal, there was no appeal. The court in sustaining the right to substitute parties plaintiff, stated at page 3:

"We think it plain both on reason and on authority the suit did not abate, but continued both for judgment and for appeal in the name of the nominal plaintiff until his successor was substituted."

Compare on the impropriety of an appeal by the United States instead of the predecessor in office, *U. S. v. Seigel*, 168 F. (2d) 143 C. A. D. C. (1948).

The present situation, as disclosed in the affidavit in support of motion filed herewith, is not like that which was involved in the case of *Snyder v. Buck*, 95 Law. Ed. 53, recently decided by this court, in which a suit against a former Paymaster General abated because substitution of the new defendant was not requested within the six months period specified in section 11 (a) of the Judiciary Act of 1925; nor is the situation here the same as that involved in the case of *Davis v. Preston*, 280 U. S. 406 (1930), in which, in a suit for damages against a Former Federal Agent, a motion for substitution was made in this court (after a writ of certiorari had been granted) almost four years after the defendant Davis had been succeeded in office by Mellon, such succession in office having occurred long before there was any effort to obtain a review in this court. This situation is also unlike that in the case of *Nudelman v. Globe Varnish Co.*, 312 U. S. 690 (1941), in which no motion to substitute was ever made.

In the instant case, the real parties in interest are the estates and the trustees involved are officers holding title to property in the custody of the federal court and in which they have no personal interest. These trustees are public officers seeking as parties plaintiff to bring into their estates assets to which such estates are entitled. The sub-



stitution, therefore, is a technical formality which should be allowed.

We, therefore, respectfully request that Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz, as successor trustee of Federal Facilities Realty Trust, be substituted for Stacy C. Mosser, the former trustee of National Realty Trust and Federal Facilities Realty Trust, as petitioners in this cause and further proceedings continued in their names.

## II.

### **Reply to Point II of Respondent Darrow's Brief.**

These petitioners contend that John Guild, as indenture trustee, is a proper petitioner in these proceedings under 28 U. S. C. A., Sec. 1254 and Sec. 206 of the Bankruptcy Act (28 U. S. C. A., Sec., 606), but will not reply at length to the assertion in respondent Darrow's brief that John W. Guild, as indenture trustee, is an improper party, since these petitioners are advised that Guild will file a separate reply brief in support of his own status as a proper party herein.

## III.

### **Reply to Point III of Respondent Darrow's Brief.**

With respect to the remarks of respondent Darrow concerning the Securities and Exchange Commission, Frank M. Whiston, as trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, as trustees of Federal Facilities Realty Trust, sought and procured the leave of the District Judge who had appointed them to file and prosecute this petition for certiorari. This was done by these trustees because they believed then, and believe now, that it was their duty so to do in order to prosecute this litigation and to effect recovery on behalf of these estates.



## IV.

**Reply to Point IV of Respondent Darrow's Brief.**

It is significant to note that the respondent Darrow's brief is directed primarily to technical questions of parties. Respondent's brief does not make a substantial effort to reply to the substantive questions raised by the petition for certiorari.

Respondent attempts to justify the decision of the Court of Appeals on the ground that a surcharge necessarily requires the existence of direct loss to the estate and cites *In re Miller's Estate*, 26 Atl. (2) 320. In that case the question involved was whether an executor should be surcharged for losses to the estate sustained by virtue of the failure of the executor to sell certain stocks promptly. The court there held that the loss resulted from an honest exercise of judgment and not from the lack of common prudence and refused to surcharge such an executor. The court there was not confronted with a situation such as is presented here, and its remarks cannot be strained to make them applicable to the present case.

A more pertinent decision on this point is *Magruder v. Drury*, 235 U. S. 106, which the respondent at length attempts to explain away. This court in the *Magruder* case held a trustee personally liable for commissions charged to his estate on sales made by him as a real estate broker for the estate. The court pointed out that the function of a surcharge in such a situation was to protect the estate by preventing a trustee from dealing with his estate, regardless of whether the estate suffers a loss.

A court of equity and of bankruptcy has sufficiently broad powers to impose a surcharge, as in the *Magruder* case, in order to protect the estate in the charge of the court against improper acts by persons owing a fiduciary duty

to that estate, and in order to restore to the estate property of which it was deprived as well as to compensate the estate for losses suffered by it.

These petitioners reassert that the general principles of law enunciated in Scott's Law of Trusts and in the Restatement of the Law of Trusts and quoted on pages 19 and 20 of petitioner's brief are directly applicable to the existent situation and support the surcharge imposed by the District Court. It is not a sufficient answer merely to state, as respondent does on page 18 of his brief, that these general principles of law quoted in petitioner's brief are not predicated on facts such as those presented by the record in this case. These quotations set forth the principles of common law which forbid a trustee from permitting his employees to take positions in conflict with their trust and to exercise their positions as fiduciaries to traffic in the securities of their trust in order to gain improper and illegal profits, and these basic principles of fiduciary responsibility must be reaffirmed in this case.

Respondent has reiterated throughout these proceedings the assertion that no case based on facts precisely the same as those here involved has been cited in support of the surcharge. It is much more significant that respondent can cite no case which countenances or condones conduct such as his or in any way gives justification for his actions.

The decision of the Court of Appeals in failing to sustain the surcharge imposed by the District Court will have a serious and extensive effect in lowering and tending to break down the high standards which are normally demanded of bankruptcy trustees and other fiduciaries.

Your petitioners respectfully assert that the petition for certiorari sets forth a cause which requires the action of this court to rectify the decision of the Court of Appeals.

**Conclusion.**

We respectfully urge this Honorable Court:

1. To grant the motion of respondents to substitute as petitioners in this cause Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz, as successor trustee of Federal Facilities Realty Trust, in place of Stacy C. Mosser, as trustee of said trusts.

2. To grant the petition for certiorari heretofore filed.

Respectfully submitted,

CARL W. MULFINGER,  
J. EDGAR KELLY,

*Attorneys for Frank M. Whiston,  
as successor trustee of National  
Realty Trust,*

CARL W. MULFINGER,  
J. EDGAR KELLY, and  
STANLEY A. KAPLAN,

*Attorneys for Joseph Schwartz, as  
successor trustee of Federal Fa-  
cilities Realty Trust.*

**APPENDIX**

**ORDER NO. 1.**

IN THE

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF ILLINOIS,**

**EASTERN DIVISION.**

In the Matter of  
NATIONAL REALTY TRUST,  
a common law trust,  
Debtor.

In proceedings for  
reorganization.  
No. 58335.

**ORDER APPOINTING ADDITIONAL TRUSTEE.**

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee and is now acting in said capacity;



And the court being fully advised in the premises, FINDS:

That the amount of property of the subsidiaries of the debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Frank Whiston is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;

2. prepare and file, within 30 days thereof, a full and complete inventory of the debtor's estate;

3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;

4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;

5. account for and pay over all interest, commissions and moneys received upon the property of the estate;

6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors and offi-

cers of said debtor, and any other witnesses, concerning said matters, or any of them;

7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance, and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtor;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's

property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Frank Whiston, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

Armour Station Building Corporation,  
Berwyn Post Office Building Corporation,  
Division and LaVergne Building Corporation,  
Grand Rapids Parcel Post Building Corporation,  
LaGrange Post Office Building Corporation,  
Ogden Park Post Office Building Corporation,  
Park View Manor Building Corporation,  
Postal Facilities, Inc., a corporation,  
6929 North Clark Street Building Corporation,  
6748 Crandon Avenue Building Corporation, and  
Windsor Shore Building Corporation.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

JUDGE CAMPBELL.

Dated: November 7, 1949.

## ORDER NO. 2.

IN THE

## UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

<p>In the Matter of  <b>FEDERAL FACILITIES REALTY TRUST,</b>  a common law trust,  <b>Debtor.</b></p>	}	<p>In proceedings for  reorganization.  No. 58334.</p>
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## ORDER APPOINTING ADDITIONAL TRUSTEE.

This matter coming on to be heard upon the report of Martin Ward, Referee in Bankruptcy as Special Master, filed herein October 27, 1949, concerning the status of the proceedings and the matter of appointing an additional trustee;

And it appearing to the court that an order has been previously entered herein approving the petition as having been properly filed under Section 77B of the Acts of Congress relating to Bankruptcy; and that Paul E. Darrow, subsequent thereto, was appointed trustee of the debtor herein, and that thereafter Paul E. Darrow resigned in August of 1943, and Stacy C. Mosser was appointed successor trustee, and is now acting in said capacity;

And the court being fully advised in the premises, FINDS:  
That the amount of property of the subsidiaries of the



debtor is large and many complex administrative questions are involved, and that it would be for the best interests of this estate and its creditors if an additional trustee was appointed.

IT IS THEREFORE ORDERED AND DECREED that Joseph Schwartz is appointed as an additional trustee of the debtor and its property.

The additional trustee shall, within five days, enter into a bond to the United States in the sum of Twenty-Five Thousand Dollars, with sureties to be approved by the court, conditioned for the faithful performance of his official duties.

The trustees shall:

1. take into their possession and control all of the property, assets and business of the debtor, wherever located;

2. prepare and file, within 30 days hereof, a full and complete inventory of the debtor's estate;

3. keep, in accordance with good accounting practices, regular accounts showing all amounts received and from what source and all amounts expended and on what accounts;

4. file with the court a report in writing as to the condition of the estate and the amount of money on hand within the first month hereafter, and every month thereafter;

5. account for and pay over all interest, commissions and moneys received upon the property of the estate;

6. continue to investigate the acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business, and the desirability of the continuance thereof, and report thereon to the judge with all convenient speed, and to that end may examine the directors

and officers of said debtor, and any other witnesses, concerning said matters, or any of them;

7. report to the judge any facts ascertained pertaining to fraud, misconduct, mismanagement, and irregularities and to any causes of action available to the estate.

The trustees shall have the power:

1. to operate the business and manage the property of the said debtor until the further order of the court, including therein, but not limiting, the generality of the foregoing power and powers:

a. to do all things necessary or convenient in the operation and conduct of said business and in the maintenance and preservation of said estate;

b. to preserve, maintain and keep the property of the debtor in good condition and repair;

c. to buy and sell, either for cash or credit, such merchandise, supplies, furniture, equipment, or other property as may be necessary or advisable in the administration, preservation, maintenance, and conduct of the debtor's business;

d. to perform or cancel existing contracts of the debtor;

e. to employ, discharge, and to pay compensation, salaries, and wages of agents, servants and employees, who may be officers of the debtor, as they deem necessary or advisable in connection with the administration, preservation, maintenance, and operation of the property, assets, and business of the debtor;

f. to pay the salaries and wages of agents, employees, laborers, and servants of the debtor, accrued or to accrue, so far as the trustees may deem it necessary or expedient to avoid detriment to the working organization of said business;

g. to pay all taxes due, or to become due, on debtor's

property, as well as all state franchise and sales taxes and all federal taxes or other impositions necessary by state or federal law;

h. to institute, prosecute, and maintain suits or proceedings at law, in equity, or under statute, in any court of competent jurisdiction, for the recovery, protection, or maintenance of the property, assets, and business of the debtor or of the trustees; and

i. to continue to defend any pending actions or suits in which the debtor or the trustees may have any interest as plaintiff, defendant, or otherwise.

The additional trustee, Joseph Schwartz, is hereby authorized and directed to exercise full voting rights of any and all stock owned by the debtor of the following corporations:

Chicago Post Office Service Building Corporation,  
Columbus Parcel Post Building, Inc.,  
Station "D" Post Office Building Corporation,  
Dallas Parcel Post Station, Inc.,  
Ferry Station Post Office, Inc.,  
Irving Park Post Office Building Corporation,  
McKinley Park Station Building Corporation,  
North Halsted Post Office Building Corporation,  
Quincy Station Post Office Building Corporation,  
Roseland Building Corporation,  
United States Building Corporation,  
South Side Post Office Service Building Corporation,  
Twenty-Second Street Station Building Corporation,  
and  
Villa Building Corporation.

The court reserves full right and jurisdiction to make, from time-to-time, such orders amplifying, extending, limiting, or otherwise modifying this order as to the court may seem proper.

ENTER:

JUDGE CAMPBELL.

Dated: November 7, 1949.



## ORDER NO. 3.

IN THE

## UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the Matter of  
 NATIONAL REALTY TRUST,  
 a common law trust,  
 Debtor.

In proceedings for  
 the reorganization  
 of a corporation.  
 No. 58335.

## ORDER.

This cause coming on to be heard upon the verified petition of Frank M. Whiston and Stacy C. Mosser, successor trustees of the debtor herein, and upon due notice to all attorneys of record, the court being fully advised in the premises, FINDS as follows:

That Frank M. Whiston and Stacy C. Mosser are the duly qualified and acting successor trustees of the debtor herein, and that on July 3, 1950, Stacy C. Mosser tendered to this Court his resignation as trustee of this debtor.

IT IS THEREFORE ORDERED BY THE COURT:

(a) That the resignation of Stacy C. Mosser as one of the trustees of this debtor filed herein on July 3, 1950, be, and the same is hereby, accepted;

(b) That Frank M. Whiston and Stacy C. Mosser are hereby directed to file their first and final joint account and



report covering the period from December 1, 1949, to and including July 3, 1950, on or before December 1, 1950;

(c) That all banks in which funds of the debtor are deposited are hereby directed to accept certified copies of this order as their authority for honoring checks signed by Frank M. Whiston and Stacy C. Mosser, as trustee of this debtor, subsequent to July 3, 1950, and prior to the date of this order, and as their authority for honoring checks subsequent to the date of this order signed only by Frank M. Whiston, successor trustee of this debtor, until the further order of this Court.

ENTER:

JUDGE CAMPBELL..

October 17, 1950.

Examined and recommended,

October 16, 1950:

MARTIN WARD,

*Referee in Bankruptcy, as  
Special Master.*

**ORDER NO. 4.**

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**IN THE**

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF ILLINOIS,**

**EASTERN DIVISION.**

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**In the Matter of**

**FEDERAL FACILITIES REALTY TRUST,**  
a common law trust,

**Debtor,**

**NATIONAL REALTY TRUST, a com-**  
mon law trust,

**Debtor.**

In proceedings for  
the reorganization  
of a corporation.

No. 58334.

No. 58335.

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**ORDER.**

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This cause coming on to be heard upon the verified petition of Frank M. Whiston, successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, and upon due notice to all attorneys of record, the court being fully advised in the premises, **FINDS** as follows:

1. That Paul E. Darrow, former trustee of National Realty Trust and Federal Facilities Realty Trust, appealed to the United States Court of Appeals from an order of this Court entered April 12, 1949, which order surcharged Mr. Darrow with \$43,447.46, being the profits made by two of the employees of said former trustee from their dealings in

the securities of these two debtors and the subsidiary corporations of each.

2. That on August 14, 1950, the United States Court of Appeals rendered its decision reversing the order of the District Court insofar as it surcharged Paul E. Darrow for said profits made by his employees, and petition for rehearing was denied by the United States Court of Appeals on September 21, 1950.

3. That the trustees of these debtors desire to appeal the decision of the United States Court of Appeals to the Supreme Court of the United States, and believe that it will be for the best interests of these trust estates to seek a reversal of the decision of the United States Court of Appeals.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Frank M. Whiston, as successor trustee of National Realty Trust, and Joseph Schwartz and Stacy C. Mosser, successor trustees of Federal Facilities Realty Trust, be, and they are hereby, authorized to file a petition for certiorari in the Supreme Court of the United States praying an appeal from the decision of the United States Court of Appeals entered August 14, 1950, and to prosecute such appeal, if allowed, and to pay any and all costs and expenses necessarily incurred in connection with such petition and appeal, all such costs and expenses to be equally divided between National Realty Trust and Federal Facilities Realty Trust.

ENTER:

JUDGE CAMPBELL.

October 26, 1950.

Examined and recommended,

October 25, 1950:

MARTIN WARD,

*Referee, as Special Master.*

## ORDER NO. 5.

IN THE

## UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

In the Matter of

FEDERAL FACILITIES REALTY TRUST,  
a common law trust,

Debtor.

In proceedings for  
the reorganization  
of a corporation.

No. 58334.

## ORDER.

This cause coming on to be heard on the resignation of Stacy C. Mosser as one of the co-trustees of this debtor,

## IT IS HEREBY ORDERED:

1. That the resignation of Stacy C. Mosser as one of the co-trustees of this debtor be, and the same is hereby, accepted, to become effective December 1, 1950.

2. That Joseph Schwartz and Stacy C. Mosser are hereby directed to file their first and final joint account and report covering the period from December 1, 1949 to and including November 30, 1950 on or before December 15, 1950.

3. That all bank accounts of the debtor and safety deposit boxes shall be transferred to the name of Joseph Schwartz as sole trustee of this debtor; and all banks and



safety deposit vault companies are hereby directed to accept certified copies of this order as their authority for honoring checks or other documents signed solely by Joseph Schwartz as trustee on and after December 1, 1950, and until further order of this Court.

ENTER:

JUDGE CAMPBELL.

November 29, 1950.

Examined and recommended,

November 24th, 1950:

MARTIN WARD,

*Referee in Bankruptcy,  
as Special Master.*

